Ontario

Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Bridging Finance Inc (Re)*, 2025 ONCMT 10
Date: 2025-06-17
File No. 2022-9

IN THE MATTER OF
BRIDGING FINANCE INC., DAVID SHARPE, NATASHA SHARPE and ANDREW MUSHORE

REASONS AND DECISION

(Subsection 127(1) and s 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Russell Juriansz (chair of the panel) Timothy Moseley Sandra Blake	
Hearing:	April 28 and 29, 2025	
Appearances:	Mark Bailey Adam Gotfried Susan Kimani	For the Ontario Securities Commission
	Lawrence Thacker Jonathan Chen Mari Galloway	For Natasha Sharpe
	David A. Hausman Jonathan Wansbrough	For Andrew Mushore
	Erin Pleet	For the receiver of Bridging Finance Inc.
	No one appearing for David Sharpe	

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REASONS AND DECISION

1. OVERVIEW

[1] In our decision on the merits dated October 28, 2024,[1] we found that:

a. David Sharpe and Natasha Sharpe (to whom we sometimes refer as "the Sharpes", or by their first names for clarity), senior officers of Bridging Finance Inc., perpetrated or participated in three securities-related frauds that involved the diversion of more than $100 million in investor funds and that affected more than 26,000 investors;

b. Andrew Mushore, Bridging's chief compliance officer, participated in one of those frauds; and

c. to varying degrees and in different ways, all respondents obstructed the Ontario Securities Commission's investigation.

[2] The Commission asks that we impose sanctions against David, Natasha and Mushore under s. 127(1) of the *Securities Act* (the ***Act***),[2] and that we order them to pay a portion of the Commission's costs of the investigation and this proceeding. For the reasons set out below, we will order that:

a. David, Natasha and Mushore pay administrative penalties of $3,600,000, $1,950,000, and $50,000 respectively;

b. David and Natasha, jointly and severally, disgorge to the Commission $2,000,000;

c. David disgorge to the Commission an additional $18,053,770.26;

d. Natasha disgorge to the Commission an additional $750,000;

e. David be prohibited permanently from participating in the capital markets in various ways, set out in detail below;

f. Natasha be prohibited permanently from participating in the capital markets in various ways, set out in detail below, subject to a conditional

[1] *Bridging Finance Inc (Re)*, 2024 ONCMT 23

[2] RSO 1990, c S.5

carve-out to permit trading or acquiring securities or derivatives in registered accounts once she has fulfilled her financial obligations under our order; and

g. Mushore be prohibited for ten years from participating in the capital markets in various ways, set out in detail below, subject to a conditional carve-out to permit trading or acquiring securities or derivatives in registered accounts once he has paid the $50,000 administrative penalty.

[3] The Commission seeks no sanctions against Bridging for any of its misconduct, because: (a) Bridging is in receivership, and any monetary sanctions would divert funds otherwise available to pay distributions to investors by Bridging's receiver; and (b) restrictions on Bridging's participation in the capital markets are unnecessary given the receivership. Nor does the Commission seek sanctions against the Sharpes for authorizing Bridging's failure to address the conflict of interest in one of the frauds. We impose no sanctions for these contraventions.

[4] We will also order that David and Natasha pay to the Commission the amounts of $784,648.64 and $422,503.10, respectively, as costs of the investigation and this proceeding.

2. BACKGROUND

[5] Bridging set up and managed various funds as investment vehicles. The funds, in turn, provided alternative short-term financing to private borrowers.

[6] For the material time, David was Bridging's chief executive officer and ultimate designated person (**UDP**). Natasha and Mushore were Bridging's chief investment officer and chief compliance officer respectively.

[7] Natasha owned one third of the shares of Bridging. David was not a shareholder.

[8] The contraventions in this case arose from three sets of loans made from two Bridging funds:

a. David arranged to receive personally almost $20 million of investor money through loans made to entities associated with Sean McCoshen (the **McCoshen loans**);

b. the Sharpes diverted approximately $40 million from one of the funds to acquire a management interest from Ninepoint Partners LP (the **Ninepoint loans**), which acquisition indirectly benefited Bridging and the Sharpes; and

c. the Sharpes orchestrated loans to entities associated with Gary Ng (the **Ng loans**) to facilitate the purchase of 50% of Bridging's shares from existing shareholders, including Natasha.

[9] We begin by analyzing the appropriate sanctions flowing from these frauds and from the respondents' efforts to obstruct the Commission's investigation. We then assess the Commission's request for payment toward its investigation and proceeding costs.

3. ANALYSIS - SANCTIONS

3.1 Introduction

[10] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it is in the public interest. The Tribunal's exercise of that jurisdiction must be consistent with the purposes of the *Act*, which include protecting investors from unfair, improper and fraudulent practices, and fostering fair and efficient capital markets and confidence in them. This jurisdiction is protective and preventative, not punitive.[3]

[11] When deciding on appropriate sanctions, the Tribunal considers various factors.[4] The following are most relevant in this case:

a. the seriousness of the misconduct;

b. the recurrent nature of the misconduct;

c. the benefit to the respondents;

d. the experience of the respondents;

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[3] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

[4] *Belteco Holdings Inc (Re),* (1998) 21 OSCB 7743 at 7746; *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451 (ON SC) at para 58; *MCJC Holdings Inc (Re),* (2002) 25 OSCB 1133 at 1135

e. whether there was remorse;

f. any other mitigating factors; and,

g. specific and general deterrence.

[12] We address these in more detail below. In our analysis on sanctions, we deal with each contravention individually and consider the appropriate financial sanctions (disgorgement and administrative penalty) for each respondent relating to that contravention. We then deal with overall market participation restrictions for each respondent.

3.2 McCoshen loans

3.2.1 Introduction

[13] We begin our sanctions analysis with the McCoshen loans. Bridging provided loans of more than $150 million to a company that Sean McCoshen owned and controlled. McCoshen also introduced Bridging to a First Nations community to which Bridging loaned more than $115 million.

[14] In the merits decision, we found that David perpetrated a fraud in connection with these loans, through which he personally received fourteen kickbacks totaling $19,553,770.26 over three years.[5] Natasha received only one $250,000 kickback from a McCoshen company, but she knew or ought to have known about the entire scheme. The payment to her occurred after David had received only about 10% of the kickbacks that would ultimately be paid to him.

[15] We found that:

a. of the $19,553,770.26 that David received, he paid $2 million to an account he and Natasha owned jointly; and

b. of the total amount diverted, at least $18.2 million can be traced to investor funds.

[5] The merits decision at para 43 contains a typographical error, and names the amount as "$19,553,77.26" [*sic*], omitting the "0" before the decimal point.

3.2.2 David

3.2.2.a Sanction factors

[16] David's conduct was egregious, and among the most serious frauds to come before the Tribunal, for several reasons. The amount involved was significant. The diversion of money directly harmed investors, because it is reasonable to infer that had there been no kickbacks, the Bridging funds would have advanced at least $18.2 million less than they did to the McCoshen companies. The seriousness of the scheme is compounded by the fact that the diversion of about 90% of the $19,553,770.26 (*i.e.*, other than the $2 million David paid to his joint account with Natasha) was purely to David's personal benefit.

[17] The fraud involved fifteen transactions that ranged from $20,000 in July 2016 (the first kickback) to $8.8 million in June 2019 (the last kickback). The repeated nature of the misconduct is an aggravating factor.

[18] David's background is another significant aggravating factor, for several reasons:

a. as a registrant, he must have understood the obligations associated with that status and the trust imposed on registrants when dealing with investor money;

b. as CEO and UDP of Bridging, he had important responsibilities, first to set a good example by ensuring that his own conduct was above reproach, and second to oversee the conduct of others within the firm;[6]

c. he has more than 20 years' experience in the financial services industry, including time as vice president of legal and the chief compliance officer at a different registered firm; and

d. he was previously the manager of the investigation function at the Mutual Fund Dealers Association.

[19] David's background makes his conduct particularly galling. His experience could only have served to amplify his apparent trustworthiness and to help Bridging

[6] *Cartaway Resources Corp (Re)*, 2004 SCC 26 (***Cartaway***) at para 5

attract investors. His misconduct was a fundamental betrayal of that trust and was an abuse of the investors.

[20] Both general and specific deterrence are important considerations in all cases. To protect investors from unfair, improper and fraudulent practices, and to safeguard confidence in the capital markets, we must make clear to David and to others in positions of seniority and trust that abusing that trust to harm investors will not be tolerated.[7]

[21] David chose not to participate in the hearing. We are not aware of any mitigating factors.

3.2.2.b Disgorgement

[22] With those factors in mind, we turn to the Commission's request for a disgorgement order against David in the amount of $19,553,770.26, the total of the kickbacks he received.

[23] Disgorgement orders are authorized by paragraph 127(1)10 of the *Act*. The Tribunal may order a respondent who has not complied with Ontario securities law to disgorge to the Commission "any amounts obtained as a result of the non-compliance". Disgorgement orders are intended to ensure that a respondent does not benefit from their breach of Ontario securities law and to deter the respondent and others from engaging in similar misconduct.[8]

[24] The Tribunal has identified five factors that it will consider in deciding an appropriate disgorgement order.[9] The first simply restates the statutory condition, *i.e.*, that the respondent did not comply with Ontario securities law, and the respondent obtained an amount as a result of the non-compliance. The other four factors are:

a. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

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[7] *Cartaway* at para 62

[8] *Al-Tar Energy Corp (Re),* 2011 ONSEC 1 at para 71

[9] *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18 at para 56

b. whether the amount that a respondent obtained as a result of the non-compliance is reasonably ascertainable;

c. whether those who suffered losses are likely to be able to obtain redress; and

d. the deterrent effect of a disgorgement order on the respondents and on other market participants.

[25] We have found that the misconduct was extremely serious. The amount that David obtained is precise and well established on the evidence. Investors are likely to suffer significant losses because of the receivership. We commented above on the need for a significant deterrent for David specifically and for others generally.

[26] We will therefore require David to disgorge the $19,553,770.26 that he obtained. Because David paid $2,000,000 of that amount to a joint account that he and Natasha held, we will order that Natasha be jointly and severally liable for $2,000,000 of the $19,553,770.26.

3.2.2.c Administrative penalty

[27] Paragraph 127(1)9 of the *Act* provides that if a person or company has not complied with Ontario securities law, the Tribunal can order an administrative penalty of not more than $1 million for each failure to comply.

[28] The Commission seeks an administrative penalty in the maximum amount of $1 million against David for the McCoshen loans. The Commission submits that such an administrative penalty is warranted due to the factors set out above.

[29] There is no formulaic approach to determining an appropriate administrative penalty. We take into account prior decisions to give context and perspective and to help us assess proportionality.

[30] The Commission cited only one previous decision in which the Tribunal has ordered the maximum administrative penalty. The 2018 decision in *Sino-Forest Corporation (Re)*[10] involved approximately $3 billion that was raised through a fraudulent scheme whereby Sino-Forest's assets and revenue were significantly

[10] 2018 ONSEC 37 (***Sino-Forest***)

overstated. The Tribunal ordered one respondent to pay administrative penalties totalling $5 million ($1 million for each of five breaches, *i.e.*, two frauds, two instances of misleading disclosure, and one instance of misleading the Commission).

[31] The Commission cited several other cases where the administrative penalties against some respondents totaled more than $1 million:

a. *Hogg (Re)*[11] - The respondents raised over US $51 million by fraudulently promoting and selling digital tokens to investors around the world. US $36,858,000 was misappropriated by the respondents. Administrative penalties of $2 million against one corporate respondent and $1 million against the individual respondent jointly and severally with a corporate respondent were ordered.

b. *Paramount Equity Financial Corporation (Re)*[12] - The respondents perpetrated securities fraud by misrepresenting the use to which investors' funds would be put. Of the $70 million raised, $50 million was put to fraudulent uses. Administrative penalties of $1,500,000, $1,000,000 and $500,000 were ordered against each of the three respondents.

c. *Pogachar (Re)*[13] - The respondents raised $22,508,607 from approximately 600 investors and a substantial portion was used in ways that were contrary to the offering memorandum, including for personal and business expenses. An administrative penalty of $750,000 was ordered against each of the respondents.

[32] In each of those three cases, however, the Tribunal found more than one distinct breach by the respondent, and we are unable to determine what amount the Tribunal attributed to each contravention.

[33] The contraventions in *Sino-Forest* were wide-ranging, involved a public company, and involved greater amounts than the amounts in this case.

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[11] 2024 ONCMT 31 (***Hogg***)
[12] 2023 ONCMT 20 (***Paramount***)
[13] 2012 ONSEC 23 (***Pogachar***)

However, that decision is seven years old, and our findings against David reflect aggravating factors (set out above) that were not present in *Sino-Forest*. David's misconduct is among the most serious to come before the Tribunal, and there are no mitigating circumstances. It is in the public interest to order that David pay an administrative penalty in the maximum amount of $1 million in respect of the kickbacks.

3.2.3 Natasha

3.2.3.a Sanction factors

[34] Natasha did not orchestrate the kickbacks scheme, nor did she directly benefit to a degree remotely approaching that of David. Her conduct is not as egregious as David's.

[35] In the merits decision, we found that Natasha knew or ought to have known about the kickback scheme. While she received only $250,000 directly from a McCoshen company, that money flowed from investors and to her personal benefit. In addition, she shares responsibility for the recurrent nature of the kickback scheme, given her opportunity to end it.

[36] Natasha submits that, all other things being equal, a fraud that is unassociated with a legitimate business (*e.g.*, a Ponzi scheme) is more egregious than a fraud that is associated with a legitimate business (such as in this case). That may be true in some cases, but we do not find the distinction useful here. We have assessed the seriousness of the fraud and Natasha's participation in it based on the circumstances of this case.

[37] Natasha's experience in the financial service industry (more than 20 years, including senior roles at two large financial institutions) and her senior position at Bridging (as chief investment officer) are aggravating factors. Unlike David, she was neither CEO at the relevant time, nor UDP. However, she did have the authority to ensure the firm's good conduct, and she had a responsibility to do so. She failed to live up to that obligation. Like David, her experience and position amplified her apparent trustworthiness and helped Bridging attract investors. Her misconduct betrayed that trust.

[38] Natasha submitted that her lack of prior regulatory misconduct was a mitigating factor, but she conceded, appropriately, that this factor should carry less weight in cases of serious and deliberate misconduct (as is the case here) than in cases of negligent failure to comply with regulatory requirements. We give this factor little weight.

[39] Natasha asked that in deciding on any financial sanctions, we consider her inability to pay. It is true that inability to pay can be a factor, but it is not ordinarily determinative.[14] To influence the amount of a financial sanction, the respondent must adduce persuasive evidence of financial hardship.[15] Natasha provided none. She did refer to the receivership order, which applies to her assets. We had evidence earlier in the proceeding (on a motion by her counsel to be removed from the record) that she owed significant sums to her counsel for legal fees. However, we do not accept the submission that we should infer an inability to pay in this case.

[40] Natasha further submits that financial sanctions against her would harm investors by reducing their prospects of obtaining redress directly in the ongoing litigation against her and others. We do not accept this submission. We cannot be influenced by speculative outcomes in civil proceedings.

[41] Natasha also referred to the fact that in connection with the Commission's court application for a receiver, it disclosed the transcripts of her compelled interviews without first obtaining an order under s. 17 of the *Act*.[16] Natasha submits that this should result in us imposing no sanctions, or lower sanctions, against her.

[42] We disagree. As we said when we dismissed Natasha's subsequent motion for a stay of the proceeding, the Commission did not act in bad faith in making that disclosure. We stated, "[a]ll that can be said is that OSC Staff took a position on a novel question of law that the Tribunal ruled was mistaken."[17] Natasha submits she has not obtained any remedy as a result of the Commission's breach.

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[14] *Solar Income Fund Inc (Re)*, 2023 ONCMT 3 (***Solar Income***) at para 70

[15] *Solar Income* at para 85

[16] *Bridging Finance Inc (Re)*, 2023 ONCMT 8

[17] *Bridging Finance Inc (Re)*, 2023 ONCMT 24 at para 19

However, she has not previously sought a remedy short of a stay before this Tribunal.

[43] Further, and contrary to Natasha's submission, the Tribunal's power to order disgorgement is not an "equitable remedy" that requires the applicant to come with "clean hands". The Tribunal has no equitable jurisdiction. While some past Tribunal decisions described this statutory power as an "equitable remedy",[18] the point was not argued in those cases. The Tribunal appears simply to have carried forward a description that originated in the United States and that was then used by the Five Year Review Committee in 2003.[19] In our view, the "equitable" label is incorrect.

3.2.3.b Disgorgement

[44] We now consider a disgorgement order against Natasha in respect of the McCoshen loans.

[45] The Commission submits that any disgorgement order against David ought to be made joint and several with Natasha as they were acting as a single entity. We disagree. We distinguished between the Sharpes in the merits decision, and we do so again here.

[46] The Commission also submits that Natasha benefited indirectly from any kickbacks that flowed to David, since: (i) $2 million was transferred to their joint account; (ii) they are spouses and lived together; and (iii) she was a settlor and contributor to the trust accounts. As a result, the Commission argues, we should find Natasha to have obtained a further benefit, beyond the $250,000, as a result of her non-compliance.

[47] We accept the first of those factors, *i.e.*, that there ought to be joint and several liability, with David, for the $2 million that flowed to the Sharpes' joint account, and our order will reflect that. We are not persuaded that either of the other two factors should influence our disgorgement order against her. In our merits

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[18] See, *e.g.*, *Blue Gold Holdings Ltd (Re)*, 2016 ONSEC 37 (***Blue Gold***) at para 33; *Black Panther Trading Corporation (Re)*, 2017 ONSEC 8 at para 71

[19] *Limelight Entertainment Inc (Re)*, 2008 ONSEC 28 at para 48; *Five Year Review Committee Final Report – Reviewing the* Securities Act *(Ontario)*, March 21, 2003, https://www.osc.ca/sites/default/files/2020-12/fyr_20030529_5yr-final-report.pdf, at p 223, fn 489

decision, we concluded the evidence did not establish that she benefited in those ways. There is no basis on which we could now take a different view.

[48] We also reject the Commission's submission that Natasha ought to be jointly and severally liable for the kickbacks paid to David after she knew or ought to have known of the kickback scheme. A disgorgement order must relate to what Natasha "obtained". There is no evidence that she obtained any of the $17,553,770.26.

[49] We will order that Natasha alone disgorge to the Commission $250,000 in respect of the kickback she received.

[50] Our disgorgement orders in respect of the McCoshen loans will therefore provide that:

a. David must disgorge $17,553,770.26;

b. Natasha must disgorge $250,000; and

c. David and Natasha are jointly and severally liable to disgorge an additional $2 million.

3.2.3.c Administrative penalty

[51] We turn to deciding the appropriate administrative penalty for Natasha's participation in the McCoshen loan fraud. The Commission seeks an administrative penalty of $800,000.

[52] Natasha seeks to distinguish this case from the decisions cited by the Commission by pointing out:

a. the frauds in *Sino-Forest* were far more complex and longstanding;

b. *Hogg* was a Ponzi scheme;

c. most investor money was misappropriated in *Paramount*; and

d. the respondents in *Pogachar* were unregistered and diverted investor funds directly for personal benefit.

[53] We accept the distinctions. However, some of the aggravating factors in this case were not present in *Hogg*, *Paramount* and *Pogachar*. One can rarely make an "apples to apples" comparison in sanctions cases, and this case is no exception.

[54] Natasha submits that the following three cases are better comparators.

[55] In *Blue Gold Holdings Ltd (Re),*[20] a 2016 decision, the Tribunal imposed a $200,000 administrative penalty on a respondent who engaged in a recurrent scheme to defraud investors and illegally traded and distributed securities, causing significant financial harm to investors. Another respondent, who only participated in the fraud, was ordered to pay $150,000. We note that the respondent ordered to pay $200,000 did not organize the fraud, and there was no allegation that he personally benefited from the diverted funds. Further, the Commission only asked for an administrative penalty of $200,000, and the Tribunal observed[21] that a greater administrative penalty might have been justified.

[56] *Bradon Technologies Ltd (Re)*[22] is a 2016 decision that involved trading and distributing securities without registration, misrepresentation to investors and numerous frauds. The respondents were ordered to pay administrative penalties of $500,000 and $300,000. Again, these were the amounts the Commission sought.

[57] In *Quadrexx Hedge Capital Management Ltd (Re)*,[23] a 2018 decision, the three respondents who engaged in three frauds were each ordered to pay an administrative penalty of $600,000.

[58] The three decisions Natasha cites are between seven and nine years old. In our view, the administrative penalties imposed in those cases are no longer sufficient deterrence.[24]

[59] In deciding an appropriate administrative penalty for Natasha, we start with the $1 million administrative penalty we impose on David, since the underlying fraud is the same. We impose a lesser administrative penalty on Natasha because:

a. Natasha did not devise the scheme and did not perpetrate the fraud;

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[20] 2016 ONSEC 37
[21] *Blue Gold* at para 59
[22] 2016 ONSEC 19
[23] 2018 ONSEC 3
[24] *Fiorillo v Ontario Securities Commission*, 2016 ONSC 6559 (Div Ct) at para 295

b. she received only one payment directly, and it was only about 1.3% of the total amount that David received;

c. Natasha was not Bridging's CEO or UDP, although she was a senior member of management; and

d. Natasha had not previously held a position with a securities regulator, as David had.

[60] Considering all the above factors, but particularly the seriousness of the misconduct (aggravated by Natasha's experience and role), and taking into account the relatively limited benefit flowing to Natasha, it is in the public interest to impose an administrative penalty of $600,000 on Natasha in respect of the kickbacks.

3.3 Ninepoint loans

3.3.1 Introduction

[61] The Ninepoint loans fraud involved the diversion of $39.75 million of investor funds to Bridging to allow it to acquire a 50% interest in Bridging fund's general partner, and related rights. In the merits decision, we found that David and Natasha both perpetrated the fraud, and in doing so used commercial leverage to enlist Rishi Gautam in implementing the fraud. They created misleading documents, and persuaded Mushore to participate.

3.3.2 David

3.3.2.a Sanction factors

[62] Although the Ninepoint loans fraud was not recurrent, it was very serious. A significant amount of investor funds was diverted to a purpose not disclosed in the funds' offering memoranda. Ultimately, $33.4 million of the $39.75 million was repaid to the funds. However, a loss of $6.35 million is still significant.

[63] While David did not benefit directly, he did benefit in indirect ways that cannot readily be quantified. As Bridging's CEO, he would benefit at least reputationally from Bridging's improved performance.

[64] David's co-opting of Gautam (a third party), and the creation of misleading documents (submitted to the Credit Committee, to Ninepoint, and to BlackRock), were aggravating factors.

[65] Finally, David's manipulation and exploitation of Mushore is a significant aggravating factor. David recruited Mushore to Bridging and appointed him chief compliance officer despite Mushore's reluctance and lack of related experience. David assured Mushore he could trust and rely on him. David coerced Mushore's loyalty through gifts and repeated reminders to Mushore that he was fortunate to have his role.

3.3.2.b Disgorgement

[66] The Commission submits that we should order disgorgement against David in the amount of $6,758,699, being the $6.35 million shortfall plus interest.

[67] We do not accept the submission. The reasoning in *Phillips (Re)*,[25] cited by the Commission, does not apply to the facts of this case. A flow of funds to a corporation may be attributed to an individual for purposes of disgorgement where the corporation functioned as the "alter ego" of the individual. Unlike the corporate respondent GBR Ontario in *First Global Data Ltd (Re)*,[26] for example, Bridging was not simply a vehicle for the improper activity. Bridging had a legitimate, wide-ranging business.

[68] We therefore decline to make a disgorgement order against David.

3.3.2.c Administrative penalty

[69] The Commission seeks the maximum administrative penalty of $1 million against David in respect of the Ninepoint loans fraud.

[70] David perpetrated the fraud. His background is an aggravating factor, as it was with the kickbacks. Once again, there are no mitigating factors.

[71] While David's misconduct was very serious, this fraud lacked the direct personal benefit that was present with the McCoshen loans. An administrative penalty of

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[25] 2015 ONSEC 36 at para 56, aff'd *Phillips v Ontario Securities Commission*, 2016 ONSC 7901 (Div Ct)

[26] 2023 ONCMT 25 at para 139

$700,000 is proportional to the misconduct here and is in the public interest. We will so order.

3.3.3 Natasha

3.3.3.a Sanction factors

[72] We see no reason to draw significant distinctions between David and Natasha when considering the factors relevant to sanctions for the Ninepoint loans fraud. Both Sharpes were involved in discussions with Gautam. Both Sharpes were involved in planning the series of transactions and in explaining the plan to Mushore. Both commented on the Credit Committee submission. Both voted as Credit Committee members to approve the transactions. As was the case with David, any benefit to Natasha was indirect. Like David, she would benefit at least reputationally from better performance by Bridging, given her senior role in the firm.

[73] Unlike David, she was a Bridging shareholder and would therefore derive an indirect financial benefit. However, Natasha was somewhat less involved, or not involved at all, in:

a. establishing the connection with Gautam, since it was David who approached Gautam, although both Sharpes were involved in subsequent discussions;

b. events after the September 7 approval emails, since there is no evidence that Natasha was on the September 8 call with Dennis McCluskey, or part of email discussions among McCluskey, David, Mushore and others; and

c. assertions that David made about the existence of a legal opinion to support the planned structure.

3.3.3.b Disgorgement

[74] Our comments above about a disgorgement order against David for the Ninepoint loans fraud apply equally to Natasha. We cannot find that Natasha obtained an amount, within the meaning of s. 127(1)10 of the *Act*. We will make no disgorgement order against her.

3.3.3.c Administrative penalty

[75] The Commission seeks an administrative penalty of $1 million against Natasha for her role in the Ninepoint loans fraud.

[76] We explained above how David's involvement in this fraud did not significantly differ from Natasha's. Her lesser involvement in some aspects warrant a slightly lower administrative penalty than David's. It is in the public interest that she pay an administrative penalty of $600,000 in respect of the Ninepoint loans.

3.3.4 Mushore

3.3.4.a Sanction factors

[77] Our comments above about the seriousness of the Ninepoint loan fraud itself apply equally to Mushore. However, his personal circumstances and role in the fraud differ significantly from those of David and Natasha.

[78] While Mushore was a registrant and Bridging's registered chief compliance officer, he was not an "officer" as that term is defined in the *Act*. He had no experience in the compliance function at any firm until David appointed him to the chief compliance officer role at Bridging.

[79] Mushore did not conceive of the fraud, nor did he contribute to the development of the scheme. However, he:

a. prepared the Credit Committee submissions and minutes that did not accurately reflect the transactions;

b. approved the transactions as a member of the Credit Committee; and

c. signed the commitment letter on behalf of Bridging.

[80] Although there were a number of red flags that Mushore ought to have addressed, his improper steps were not at his own initiative. At all times, he acted under the direction of the Sharpes, and particularly of David. That fact is relevant but cannot excuse his misconduct or eliminate the need for an administrative penalty, especially given his independent oversight role.

[81] Similarly, we cannot give full credit to Mushore's testimony (sincere though it was) that he had no realistic options because of the close relationship between David and all members of Bridging's board of directors, and because David

expressly instructed him not to escalate matters to the board. We appreciate the difficulty of the situation in which Mushore found himself, and we acknowledge the personal risk that compliance professionals often assume, as Mushore did. However difficult it may be, though, sometimes a chief compliance officer must defy the CEO, escalate issues to the board, report the issues to a regulator, or resign.

[82] Mushore must be accountable for his choices. However, his inexperience, his unusual vulnerability to manipulation, and the Sharpes' exploitation of that vulnerability, are significant mitigating factors.

[83] We also consider Mushore's extensive co-operation with the Commission's investigation and with the receiver, and his candour before us, to be significant mitigating factors. The Commission relied extensively on his testimony. The sanctions we impose should recognize and encourage such co-operation.

[84] Mushore submits that he is remorseful. While he did not expressly state that in his evidence, we accept that he deeply regrets his part in the misconduct. We believe he understands the errors he made.

[85] Finally, Mushore submits that he is not a meaningful threat to investors or to the capital markets generally. We agree.

[86] The Commission does not seek a disgorgement order against Mushore.

3.3.4.b Administrative penalty

[87] The Commission seeks an administrative penalty of $500,000 against Mushore in respect of the Ninepoint loans fraud. Mushore submits that an administrative penalty of that amount would be disproportionate.

[88] Given Mushore's co-operation, his limited role, David's manipulation of him, and little need for specific deterrence, it is in the public interest to impose an administrative penalty significantly less than that requested by the Commission.

[89] We will order Mushore to pay an administrative penalty of $50,000.

3.4 Ng loans

3.4.1 Introduction

[90] We turn now to the Ng loans fraud, which involved the diversion of $30 million of investor funds as a loan to Ng to purchase shares of Bridging, including Natasha's. In the merits decision, we found that Natasha perpetrated the fraud, and David participated in it.

[91] The fraud involved the submission of misleading filings, a failure to conduct due diligence, the creation of documents that obscured the borrower's business, the making of advances without approvals, and payments of $500,000 to each of David and Natasha. Natasha initially received $16.67 million for her shares, although she later unwound the transaction and repaid the proceeds when it was discovered that Ng had defrauded Bridging.

3.4.2 Natasha

3.4.2.a Sanction factors

[92] Natasha orchestrated the fraud. The fraud was serious given the diversion of a significant amount of money for a purpose not authorized by the offering memoranda. That she benefited personally, both from selling her shares (initially) and the $500,000 payment, is an aggravating factor.

[93] Natasha submits that she understood the $500,000 payment to be a bonus from Ng regarding her employment. As Natasha did not testify, there is no evidence to support that submission. We reject it.

[94] The Commission urges us not to give Natasha credit for repaying the proceeds of the sale of her shares, arguing that her later repayment does not erase her initial misconduct. That is true, but there should be incentives for individuals to take steps — even after misconduct — to reduce investor harm. We decline to adopt the British Columbia Securities Commission's finding in *Wong (Re)*[27] that such action is not a mitigating circumstance.

[27] 2017 BCSECCOM 57 at para 60d

3.4.2.b Disgorgement

[95] The Commission seeks an order requiring Natasha to disgorge the $500,000 she received from the fraud. Natasha conceded that if we do not accept her argument for reduced sanctions because of the Commission's breach of s. 16 of the *Act*, we should make the requested order. We will therefore order that she disgorge $500,000 to the Commission with respect to this fraud.

3.4.2.c Administrative penalty

[96] The Commission seeks the maximum administrative penalty of $1 million against Natasha for this fraud. In addition to the sanctioning factors considered above, our earlier comments about Natasha's experience and position apply equally here.

[97] It is proportionate and in the public interest to order that Natasha pay an administrative penalty of $500,000 in respect of the Ng loans.

3.4.3 David

3.4.3.a Sanction factors

[98] Our earlier comments about David's experience and role apply equally with respect to this fraud. David participated in this fraud but did not perpetrate it. His involvement is less than Natasha's, and since he was not a Bridging shareholder, he did not benefit in the same way Natasha did.

3.4.3.b Disgorgement

[99] For the same reasons expressed above about Natasha, we will order David to disgorge $500,000 to the Commission, being the amount that he received directly with respect to this fraud.

3.4.3.c Administrative penalty

[100] The Commission seeks an administrative penalty of $800,000 against David for his role in the fraud. Given his role relative to Natasha's, a modest reduction from the $500,000 we ordered against Natasha is appropriate. It is in the public interest for David to pay an administrative penalty of $400,000.

3.5 Obstruction of the Commission's investigation

3.5.1 Introduction

[101] The respondents obstructed the Commission's investigation in various ways. We begin with David.

3.5.2 David

[102] We found in the merits decision that David engaged in a systematic, deliberate and extensive effort to obstruct the Commission's investigation:

a. during his examinations in the investigation, he provided false or misleading answers about:

   i. whether he received the kickbacks;

   ii. the source of funds used to purchase the Ninepoint management interest;

   iii. the purpose of the Ng loans; and

   iv. whether Ng paid him $500,000;

b. David caused Bridging to delete a mass quantity of emails, and to withhold other emails, about topics connected to the Commission's investigation;

c. David instructed others to alter documents to:

   i. misidentify the payee of the McCoshen loans;

   ii. omit the Ninepoint loans from schedules produced to the Commission;

   iii. misrepresent steps and individuals involved in the Ng loans, and the number, and purpose of the Ng loans; and

   iv. withhold the names of individuals involved in Bridging's loan approval process.

[103] Each of these actions contravened s. 122(1)(a) of the *Act* to the extent David acted directly. Where Bridging misled the Commission (*e.g.*, by producing an incomplete set of emails), David authorized Bridging's contravention, and he is deemed under s. 129.2 of the *Act* to have committed the same breaches.

[104] In addition to the above contraventions, David:

a. pressured Bridging employees to lie to the Commission if asked about one of the Ng loans; and

b. attempted to dissuade Bruno Novo, Kevin Moreau and Mushore, from co-operating with the receiver, by sending them intimidating texts and menacing voicemail messages.

These two acts are not contraventions of Ontario securities law and we do not consider them in assessing the appropriate administrative penalty.

[105] With respect to the contraventions, the Commission seeks:

a. the maximum administrative penalty of $1 million in respect of David's instructing and authorizing Bridging's deletion of emails; and

b. an administrative penalty of $500,000 for making false or misleading statements to the Commission, and authorizing Bridging's contravention in relation to providing misleading information and altered records to the Commission.

[106] The Commission submits that *Sino-Forest* is particularly germane because in that case, as in this one, the respondents made a broad range of significantly misleading statements to the Commission during its investigation. The Tribunal ordered administrative penalties of $1 million and $750,000, respectively, against two of the respondents for misleading the Commission.

[107] David's misconduct was brazen, extensive, deliberate and recurrent. He ignored both Bridging's and his own responsibilities, showing complete disregard for the Commission's and the court-appointed receiver's responsibilities and authority. Worse, he used his power to co-opt others into deceiving the Commission. David's misconduct may be the most egregious the Tribunal has ever encountered.

[108] It is in the public interest to order that David pay the administrative penalties that the Commission requested, *i.e.*, $1 million for the deletion of emails, and $500,000 for the false and misleading statements.

3.5.3 Natasha

[109] Natasha also obstructed the Commission's investigation. She:

a. provided false or misleading answers in her examination about:

i. the source of funding of the loan from Gautam's company, related to the Ninepoint fraud;

ii. the purpose of the Ng loans; and

iii. whether Ng paid her $500,000;

b. exerted pressure on Mushore and others to misrepresent the nature of a $10 million loan to Ng; and

c. knowingly permitted David to listen to the Commission examining her by telephone, contrary to s. 16 of the *Act*.

[110] The Commission seeks an administrative penalty of $400,000 for Natasha's producing altered records and making false or misleading statements to the Commission. The Commission seeks a further $100,000 administrative penalty for permitting David to listen to her examination.

[111] Natasha's obstruction of the Commission's investigation was significantly less than David's. However, her conduct was deliberate, she co-opted others into deceiving the Commission, and she demonstrated a disregard for the Commission's responsibilities and authority.

[112] It is in the public interest that Natasha pay an administrative penalty of $200,000 relating to altered records and making false or misleading statements, and an administrative penalty of $50,000 for permitting David to listen to her examination.

3.5.4 Mushore

[113] Mushore played a role in altering records that Bridging produced to the Commission about the Ng loans. He did so on David's instructions.

[114] While Mushore's misconduct is not a contravention of Ontario securities law, he did substantially undermine the clear animating principle in s. 122(1)(a) of the *Act* that no one may mislead the Commission in an investigation. We take this

misconduct into account below, when we discuss appropriate market participation restrictions.

3.6 Market participation restrictions

3.6.1 Introduction

[115] The Commission submits that permanent market restrictions including: (i) trading securities or derivatives; (ii) acquiring securities; (iii) holding positions as director or officer; and (iv) becoming or acting as registrants or promoters, are appropriate and in the public interest, against all three individual respondents. According to the Commission, the Sharpes and Mushore simply cannot be trusted to participate in the capital markets in any way.[28]

[116] The Commission further submits that the permanent market restrictions it seeks are routinely ordered in cases of fraud. For instance, the Tribunal ordered permanent bans against some or all respondents in *Sino-Forest*,[29] *Money Gate*,[30] *Paramount*[31] and *North American Financial Group*.[32]

3.6.2 David

[117] For his egregious misconduct, we will permanently ban David from any participation in the capital markets.

3.6.3 Natasha

[118] Natasha submits that she has no intention of pursuing a career in the capital markets. She does not oppose the participation restrictions the Commission seeks, except that she requests certain carve-outs.

[119] Natasha submits that the restriction prohibiting trading in securities should be limited to a 5-year ban to enable her, later, to earn income. She also submits that she ought to be permitted to trade in registered accounts. Finally, Natasha seeks an exemption to act as an officer or director of a private company.

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[28] *Lyndz Pharmaceuticals Inc (Re)*, 2012 ONSEC 25 at para 80

[29] *Sino-Forest* at para 204

[30] *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10 (***Money Gate***) at para 84

[31] *Paramount* at para 4

[32] *North American Financial Group Inc (Re)*, 2014 ONSEC 28 (***North American Financial Group***) at para 76

[120] The Commission opposes Natasha's requested carve-outs.

[121] Natasha's request for carve-outs regarding director and officer bans was made without any supporting rationale or particularity. It would not be in the public interest, based on the record before us, to make the blanket exception she requests.

[122] We do accept Natasha's request that she ought to be permitted, on a limited basis, to trade in the capital markets. We will order that she be able to trade in registered accounts, through a registered dealer in Canada to whom she has given a copy of the order, once she has fulfilled her financial obligations under our order.

Mushore

[123] The Commission asks that we ban Mushore permanently from the capital markets.

[124] We agree that the nature of Mushore's misconduct dictates that he be prohibited from being a director or officer of an issuer or registrant for some time. Given the mitigating factors set out above, a permanent ban is not necessary. It is in the public interest to prohibit him from being a director or officer for ten years.

[125] As for Mushore's ability to trade, a similar period is in the public interest. We will impose a ten-year ban on his trading. Mushore submits that even if he is subject to a ban, he still ought to be permitted to trade in registered accounts (*e.g.*, an RRSP). The Commission does not object to this carve-out, so long as Mushore first pays any financial sanctions and costs we order, and that any trading occur only through a registered dealer to whom he has given a copy of our order. We will so order.

4. ANALYSIS – COSTS

4.1 Introduction

[126] Section 127.1 of the *Act* authorizes us to order that a respondent who has contravened Ontario securities law pay the Commission's costs of the investigation and the proceeding.

[127] The Commission seeks total costs of $1,814,502.48, with $300,000 allocated against Mushore and the balance against the Sharpes, jointly and severally. The Commission provided a bill of costs setting out the time spent by various members of Commission staff. It sets out time spent by four counsel, three senior forensic accountants, one senior investigator, and two law clerks. By claiming costs of all staff, the Commission has departed from past practice of limiting its claim to time spent by only one litigation counsel and only one investigator.

[128] Natasha and Mushore submit that we should not permit the Commission to depart from its past practice. However, in its application to commence this proceeding, the Commission asserted an unlimited claim for costs. The respondents offered no legal principle that would permit us to compel the Commission to adhere to its previously self-imposed constraint.

[129] Having said that, we do apply two reductions to the Commission's top-line number.

[130] First, we deduct $90,000, which we estimate to be the costs of the Commission's defence of the respondents' pre-hearing motions for a stay. We do not think it appropriate to order the respondents to reimburse the Commission for costs the Commission incurred as a result of its own incorrect interpretation of the *Act*. This results in a new total claim of $1,724,502.48.

[131] Second, we apply an across-the-board reduction of 30%, to recognize the inefficiencies inherent in long, complex investigations and proceedings that inevitably involve some turnover in assigned personnel. We are also mindful of the important principle that in exercising our discretion to order a person or company to pay costs, we must balance having costs being borne by members of the investing public against costs being so high as to affect, unreasonably, a respondent's willingness, and ability, to pursue a full defence.[33]

4.2 Allocation of costs and further reductions

[132] Applying the 30% reduction results in a total costs award of $1,207,151.74. We allocate that amount among the three frauds and obstruction contraventions,

[33] *Feng (Re)*, 2023 ONCMT 43 at para 96

based on the complexity and level of detail involved in each. We then allocate the amount for each among the respondents according to their contributions to the misconduct.

[133] We allocate no costs to Mushore. He did not materially contribute to the Commission's costs, and his co-operation with the Commission may well have made the investigation and hearing more efficient. We repeat that co-operation such as his should be encouraged.

[134] We attribute 25% of the total costs ($301,787.93) to the McCoshen loans. We allocate 80% ($241,430.35) of the costs to David and 20% ($60,357.59) to Natasha.

[135] We attribute 35% of the costs ($422,503.11) to the Ninepoint loans. This fraud involved fewer transactions, but the involvement of Gautam and the papering of the transactions added to the complexity and time required to investigate. We allocate 60% ($253,501.87) to David and 40% ($169,001.24) to Natasha.

[136] We attribute 20% of the costs ($241,430.35) to the Ng loans. They were more confined than the McCoshen and Ninepoint frauds. We allocate 70% ($169,001.24) to Natasha and 30% ($72,429.10) to David.

[137] We attribute the remaining 20% of the costs ($241,430.35) to the obstruction of the Commission's investigation. We allocate 90% ($217,287.32) of those costs to David and 10% ($24.143.03) to Natasha.

[138] We will therefore order David to pay $784,648.64 and Natasha to pay $422,503.10 of the costs incurred by the Commission.

5. CONCLUSION

[139] Accordingly, for the reasons above, we will issue an order that:

a. with respect to David:

i. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Act*, he cease trading in any securities or derivatives and cease acquiring any securities, permanently;

ii. pursuant to paragraph 3 of s. 127(1) of the *Act*, the exemptions contained in Ontario securities law do not apply to him permanently;

iii. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act*, he resign from any positions he holds as a director or officer of an issuer or registrant;

iv. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act*, he be prohibited from becoming or acting as a director or officer of any issuer or registrant, permanently;

v. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, he be prohibited from becoming or acting as a registrant or promoter, permanently;

vi. pursuant to paragraph 9 of s. 127(1) of the *Act*, he pay to the Commission an administrative penalty of $3,600,000;

vii. pursuant to paragraph 10 of s. 127(1) of the *Act*, he disgorge to the Commission $18,053,770.26; and

viii. pursuant to s. 127.1 of the *Act* he pay to the Commission $784,648.64 for the costs of the investigation and proceeding;

b. with respect to Natasha:

i. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Act*, she cease trading in any securities or derivatives and cease acquiring any securities, permanently, except that after she has fully paid the amounts in subparagraphs b(vi), b(vii), b(viii) and d below, she may trade securities or derivatives, and acquire securities, in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*),[34] of which she, her spouse or her children are the sole legal and beneficial owners, through a registered dealer in Canada to whom she has given a copy of our

[34] RSC, 1985, c 1 (5th Supp)

order and a certificate from the Commission confirming that she has paid the monetary sanctions and costs as required;

ii. pursuant to paragraph 3 of s. 127(1) of the *Act*, the exemptions contained in Ontario securities law do not apply to her permanently;

iii. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act*, she resign from any positions she holds as a director or officer of an issuer or registrant;

iv. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act*, she be prohibited from becoming or acting as a director or officer of any issuer or registrant, permanently;

v. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, she be prohibited from becoming or acting as a registrant or promoter, permanently;

vi. pursuant to paragraph 9 of s. 127(1) of the *Act*, she pay to the Commission an administrative penalty of $1,950,000;

vii. pursuant to paragraph 10 of s. 127(1) of the *Act*, she disgorge to the Commission $750,000; and

viii. pursuant to s. 127.1, of the *Act*, she pay to the Commission $422,503.10 for the costs of the investigation and proceeding;

c. with respect to Mushore:

i. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Act*, he cease trading in any securities or derivatives and cease acquiring any securities, for 10 years, except that after he has fully paid the amount in subparagraph c(vi) below, he may trade securities or derivatives, and acquire securities, in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*), of which he, his spouse or his children are the sole legal and beneficial owners, through a registered dealer in Canada to

whom he has given a copy of our order and a certificate from the Commission confirming that he has paid the monetary sanction as required;

ii. pursuant to paragraph 3 of s. 127(1) of the *Act*, the exemptions contained in Ontario securities law do not apply to him for 10 years;

iii. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act*, he resign any positions he holds as a director or officer of an issuer or registrant;

iv. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act*, he be prohibited from becoming or acting as a director or officer of any issuer or registrant for 10 years;

v. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, he be prohibited from becoming or acting as a registrant or promoter for 10 years; and

vi. pursuant to paragraph 9 of s. 127(1) of the *Act*, he pay to the Commission an administrative penalty of $50,000; and

d. pursuant to paragraph 10 of s. 127(1) of the *Act*, David and Natasha disgorge to the Commission, in addition to the amounts set out above in subparagraphs a(vii) and b(vii), $2,000,000, for which amount they are jointly and severally liable.

Dated at Toronto this 17th day of June, 2025

"Russell Juriansz"

Russell Juriansz

"Timothy Moseley"

Timothy Moseley

"Sandra Blake"

Sandra Blake